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6
7 BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
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| | |
|--------------------------------------|------------------------|
| 10 In the Matter of the Accusation) | NO. AC-94-14 |
| 11 Against:) | |
| 12 BENIGNO BERCASIO J. ALAS) | STIPULATION, DECISION, |
| 2480 Aaron Street) | AND ORDER |
| 13 Los Angeles, CA 90057) | |
| Certified Public Accountant) | |
| 14 Certificate No. CPA 23757) | |
| 15 Respondent.) | |

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the
18 parties to the above entitle matter as follows:

19 1. At the time of executing and filing the accusation
20 in the above matter, complainant, Carol Sigmann, was the Executive
21 Officer for the Board of Accountancy, Department of Consumer
22 Affairs (hereinafter "Board") and filed the said accusation in the
23 above matter solely in her official capacity and not otherwise.

24 2. Respondent has received and read the accusation
25 heretofore filed in case number AC-94-14 currently pending before
26 the Board. A copy of said accusation is attached, marked Annex A,
27 and is incorporated herein by this reference.

1 3. Respondent has been informed of his right to have
2 an attorney represent him with respect to the content and effect
3 of this stipulation.

4 4. Respondent is aware of his right to a full and
5 complete hearing on the charge(s) and allegation(s) contained in
6 the accusation, his right to reconsideration, appeal, and all other
7 rights which may be afforded him by the California Administrative
8 Procedures Act in connection with this accusation. Respondent
9 acknowledges receipt of his rights under the California
10 Administrative Procedures Act. For purposes of this stipulation,
11 respondent freely and voluntarily waives his right to a hearing,
12 his right to reconsideration, to appeal, and to any and all rights
13 afforded to him by the California Administrative Procedures Act or
14 any other law governing accusation No. AC-94-14.

15 5. The characterization of law and fact, as set forth
16 herein, are made solely for purposes of settlement between the
17 board and the respondent, and are null and void for any proceeding
18 except as between the Board and the respondent. Respondent admits
19 the truth of the allegations contained in the Accusation pending
20 against him. Respondent further admits that he is subject to
21 discipline under Business and Professions Code sections 5100 (c),
22 5100(h), (i) and 5100(f).

23 6. Based on the foregoing admissions, stipulations, and
24 recitals, it is agreed that the Board may issue the following
25 decision and order:

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1 respondent shall not be excused from attendance at the
2 designated meeting(s) of the Committee unless excused in
3 writing by the Board or its authorized employee or agent.

4 (7) The respondent shall cooperate fully with the Board
5 and any of its agents or employees in their supervision and
6 investigation of his compliance with the terms and conditions
7 of his probation, including the Board's Probation Surveillance
8 Compliance Program.

9 (8) In the event respondent should leave California to
10 reside or practice outside the State, the respondent must
11 notify the Board in writing of the dates of departure and
12 return. Periods of residency or practice outside the State
13 shall not apply to the reduction of the probationary period.

14 (9) If the respondent violates probation in any respect,
15 the Board, after giving respondent notice and opportunity to
16 be heard, may revoke probation, and carry out the disciplinary
17 order which has been stayed. If an accusation or petition to
18 revoke probation is filed against the respondent during
19 probation, the Board shall have continuing jurisdiction until
20 the matter is final, and the period of probation is extended
21 until the matter is final.

22 (10) The respondent shall be subject to, and shall
23 permit, a general review of the respondents' professional
24 practice. Such review shall be conducted by the Board
25 whenever designated by the Administrative Committee, provided
26 notification of review is accomplished in a timely manner.

27 / / /

1 (11) The respondent shall reimburse the Board \$5,345.63
2 for the reasonable cost of its investigation and prosecution of
3 this matter, including legal fees incurred for the out of court
4 settlement of this matter.

5 (12) For purposes of paragraph "11", respondent shall be
6 permitted to reimburse the Board for its cost with one
7 lump sum payment on or before May 30, 1995.

8 (13) Until accepted by the Board of Accountancy, this
9 stipulation shall be of no force and effect on the parties.

10 (14) Respondent shall be required to complete 40 hours
11 of CPE Courses as directed by the Administrative Committee,
12 and it is understood between and by the parties that these
13 courses shall be in addition to those continuing education
14 hours needed for relicensing.

15 (15) Respondent shall be required to complete a Board-
16 approved course in ethic with one year following the
17 resumption of practice as a certified public accountant.

18 (16) Respondent shall submit his working papers and draft
19 reports relative to new audit engagements to an outside CPA
20 for review prior to issuance of audit reports.


21 (19) For purpose of paragraph "11," and "12" it is
22 further understood by the parties that failure to comply with the
23 requirements of paragraph "11" and "12" shall be grounds for
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1 revocation of respondent's probation and the reinstatement of the
2 Board's order revoking CPA Certificate Number 23757.

3 DATED: 10/8/94

4 DANIEL E. LUNGREN
5 Attorney General


6 By 
7 HOOMAN ROWSHAN
8 Deputy Attorney General

9 Attorneys for the Complainant

10 
11 BENIGNO BERCASIO J. ALAS
12 Respondent
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1 The Board of Accountancy hereby adopts the foregoing
2 stipulation as its decision and order in this matter. This
3 decision and order is effective on January 7, 1995.

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8 Dated: December 8, 1994


The Board of Accountancy

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25 HR:kg:ft
26 A:\Benigno (HR1)
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of the State of California
2 HOOMAN ROWSHAN,
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Los Angeles, CA 90013
4 Telephone: (213) 897-2574

5 Attorneys for Complainant

6
7
8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

| | | |
|------------------------------------|---|--------------|
| 11 In the Matter of the Accusation |) | NO. AC-94-14 |
| Against: |) | |
| 12 BENIGNO BERCASIO J. ALAS |) | ACCUSATION |
| 13 2480 Aaron Street |) | |
| 14 Los Angeles, CA 90026 |) | |
| 15 Certified Public Accountant |) | |
| Certificate No. CPA 23757 |) | |
| 16 Respondent. |) | |

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18
19 Complainant, Carol Sigmann, for causes of discipline
20 against respondent, alleges:

21 1. Complainant makes and files this accusation in her
22 capacity as the Executive Officer of the Board of Accountancy
23 (hereinafter referred to as the "Board") of the Department of the
24 Consumer Affairs of the State of California, and not otherwise.

25 2. On December 10, 1976, the Board issued to Benigno
26 Bercasio J. Alas (hereinafter referred to as the "respondent")
27 Certified Public Accountant certificate number CPA 23757. The said

1 certificate is in full force and effect until October 1, 1995, at
2 which time it shall expire if not renewed.

3 3. Business and Professions Code section 5100 provides
4 that the Board may revoke, suspend or refuse to renew any permit
5 or certificate, or may censure the holder of a certificate or
6 permit for unprofessional conduct.

7 4. Business and Professions Code section 5100(c)
8 provides that unprofessional conduct includes but is not limited
9 to gross negligence in the practice of public accountancy or
10 bookkeeping operations.

11 Business and Professions Code section 5100(h)(i)
12 provides that unprofessional conduct includes knowing preparation,
13 publication or dissemination of false, fraudulent, or materially
14 misleading financial statements, reports, or information.

15 5. Respondent is subject to discipline under Business
16 and Professions Code section 5100 and 5100(h)(i) by the reason of
17 following facts:

18 (a) Respondent knowingly prepared or caused to be
19 prepared three fraudulent tax returns for a client
20 of his accounting practice.

21 (b) Said returns were prepared to assist a client of
22 respondent's accounting practice to qualify for bank
23 loans.

24 6. Respondent is subject to discipline under Business
25 and Professions Code sections 5100 and 5100(c), for unprofessional
26 conduct and gross negligence within the scope of Business and
27 Professions Code section 5100(c), by the reason of the following

1 facts:

2 (a) While performing an audit engagement for the
3 California Paramedical and Technical College for year ended
4 December 31, 1990, respondent failed to prepare working papers
5 to substantiate proper assessment of the existing internal
6 control structure and, specifically, failed to document any
7 evidence of test of control procedures to determine if the
8 internal controls were in fact functioning as prescribed.

9 (b) While performing an audit engagement for the
10 California Paramedical and Technical College for the year
11 ended December 31, 1990, respondent failed to conduct
12 substantive testing of revenue and expenditure transactions
13 to determine if they were properly authorized, supported, and
14 recorded. Furthermore, respondent failed to perform revenue
15 and expenditures cut-off testing and failed to determine if
16 the year-end accruals were appropriate.

17 (c) While performing an audit engagement for the
18 California Paramedical and Technical College for the year
19 ended December 31, 1990, respondent failed to perform the
20 appropriate fixed assets testing.

21 (d) While performing an audit engagement for the
22 California Paramedical and Technical College for the year
23 ended December 31, 1990, respondent failed to present all the
24 required note disclosures to the audited financial statement
25 for the entity under review.

26 (e) While performing an audit engagement for the
27 California Paramedical and Technical College for the year

ended December 31, 1990, respondent failed to properly plan and document his audit.

(f) While performing an audit engagement for the California Paramedical and Technical College for the year ended December 31, 1990, respondent improperly prepared a cash flow statement by failing to do the required reconciliation of net income to net cash flow from operating activities.

(g) While performing an audit engagement for the California Paramedical and Technical College for the year ended December 31, 1990, respondent failed to secure legal and management representation letters.

(h) While performing an audit engagement for the California Paramedical and Technical College for the year ended December 31, 1990, respondent failed to include in his working papers any evidence of subsequent events testing between the balance sheet date and the date of the audit report (subsequent period).

(i) Each act as alleged in paragraphs A through H is an extreme departure from the ordinary standard of practice in the accounting profession, in violation of Business and Professions Code sections 5100 and 5100(c).

7. Business and Professions Code section 5050 provides that no person shall engage in the practice of public accountancy in this State unless such a person is the holder of a valid permit to practice public accountancy issued by the board. Business and Professions Code sections 5100 and 5100(f) provide that the Board may revoke, suspend, or otherwise discipline a license for willful

1 violation of the provision(s) of the Business and Professions Code
2 or the rules and regulations promulgated by the Board.

3 8. Respondent is subject to discipline under the
4 Business and Professions Code sections 5100 and 5100(f), by the
5 reason of the following facts:

6 From the period of September 30, 1991, to
7 August 6, 1993, respondent engaged in the
8 practice of public accountancy without a valid
9 permit.

10 9. Business and Professions Code section 5107 provides
11 that in any order issued in the resolution of a disciplinary
12 proceeding before the Board, the executive officer of the Board may
13 request the administrative law judge to direct the certificate
14 holder found to have violated Business and Professions Code section
15 5100 to pay to the Board a sum not to exceed the actual and
16 reasonable cost of the investigation and prosecution of the matter,
17 including attorney's fees.

18 NOTICE IS HEREBY GIVEN respondent that pursuant to
19 Business and Professions Code, complainant hereby requests the
20 administrative law judge to direct the respondent if found in
21 violation, to pay to the Board the reasonable cost of its
22 investigation and prosecution of this matter.

23 WHEREFORE, Complainant prays that a hearing be held on
24 the charges and that:

25 1. The Board issue an order suspending or revoking the
26 certified public accountant CPA 23757, issued to Benigno Bercasio
27 J. Alas; and

2. Directing the respondent to pay to the Board of Accountancy the reasonable cost of its investigation and the prosecution of this matter.

3. Taking such other and further action as the board
deems appropriate and just.

DATED:

: January 26, 1994

Carol Sigmann
Carol Sigmann
Executive Officer

Carol Sigmann
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

HR:kg
03541110-LA93AD2226
Alas

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

| | | |
|----------------------------------|---|-------------------|
| In the Matter of the Petition to |) | Case No. D1-94-14 |
| Revoke Probation and Accusation |) | |
| Against: |) | OAH No. L-9703009 |
| |) | |
| BENIGNO BERCASIO ALAS, JR. |) | |
| P.O. Box 250097 |) | |
| Glendale, California 91225 |) | |
| |) | <u>DECISION</u> |
| Certificate Number 23757, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

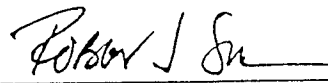
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as its decision in the above-entitled matter.

This Decision shall become effective October 29, 1997.

IT IS SO ORDERED September 29, 1997.

BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



PRESIDENT

rfm

BEFORE THE BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

| | | |
|----------------------------------|---|-------------------|
| In the Matter of the Petition to |) | Case No. D1-94-14 |
| Revoke Probation and Accusation |) | |
| Against: |) | OAH No. L-9703009 |
| |) | |
| BENIGNO BERCASIO ALAS, JR. |) | |
| P.O. Box 250097 |) | |
| Glendale, CA 91225 |) | |
| |) | |
| Certificate Number 23757 |) | |
| |) | |
| |) | |

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, heard this matter on August 11, 1997, at Los Angeles, California.

Complainant was represented by Michael A. Shekey, Deputy Attorney General. Respondent appeared and was represented by Jose Lauchengcho, Jr.

After receiving evidence and hearing argument, the ALJ submitted the matter for decision at the end of the hearing.

FINDINGS OF FACT

1. Carol B. Sigman filed the Petition to Revoke Probation and Accusation, the First Amended Petition to Revoke Probation and Accusation, and the First Supplemental Petition to Revoke Probation and Accusation while acting in her official capacity as Executive Officer of the Board of Accountancy ("the Board"), Department of Consumer Affairs, State of California.

2. (A) The Board issued a Certified Public Accountant Certificate, number 23757, to Respondent on December 10, 1976.

(B) On or about January 26, 1994, the Board made an accusation against Respondent in case no. AC-94-14, wherein Respondent was accused of unprofessional conduct and gross negligence. In order to resolve that matter, Respondent and the Board entered into a stipulation ("the stipulation") whereby Respondent's Certificate was ordered disciplined.

(C) Pursuant to the stipulation, Respondent's Certificate was revoked. The order of revocation was stayed on the condition that Respondent's Certificate be actually suspended for 180 days, and that he be placed on three years probation. The suspension of Respondent's Certificate became effective January 7, 1995, and his probation commenced on that date as well.

3. The stipulation set forth various probation terms and conditions relevant to this proceeding, described generally as follows:

(A) that Respondent obey all Federal, state, and local laws, as well as all rules pertaining to the practice of public accounting in the State of California;

(B) that Respondent file quarterly reports with the Board, on forms provided by the Board, within ten days of the close of each quarter during the probation period.

4. (A) On July 13, 1995, in the Municipal Court, Glendale Judicial District, County of Los Angeles, in the case People vs. Benigno Alas, no. 95M03278, Respondent pled guilty to one count of violating Business and Professions Code section 16240. By that plea, Respondent was convicted of conducting a business without a license, a misdemeanor.

(B) Following Respondent's plea, the court suspended imposition of sentence and ordered him placed on two years informal probation. He was ordered to pay a fine of \$50.00, with penalty assessments, and ordered to pay a further \$100.00 to the victims restitution fund. Other standard conditions of probation were imposed as well.

5. The circumstances of Respondent's conviction were as follows. During the period from January 7, 1995, until at least April 15, 1995, while his CPA Certificate was suspended, Respondent operated a business preparing tax returns without holding a tax preparer's registration. Respondent admitted the essential facts of his wrongdoing to a Board investigator, who then referred the matter over to the local prosecutor.

6. Respondent violated the terms and conditions of the stipulated probation order by committing the acts which led to his conviction, based on Findings 3(A), 4, and 5.

7. (A) Respondent did not submit a quarterly report for the probation period ending December 31, 1995, until May 24, 1996, although such report was due January 10, 1996.

(B) Respondent did not submit a quarterly report for the probation period ending March 31, 1996, until May 24, 1996, although such report was due April 10, 1996.

8. Respondent violated the terms and conditions of the stipulated probation order by failing to submit the December 31, 1995, and March 31, 1996, quarterly reports in a timely manner, based on Findings 3(B), 7(A), and 7(B).

9. On or about February 26, 1996, Respondent issued an audit report in connection with his audit of New Brittany Terrace (sometimes hereinafter "NBT"), an apartment building, which audit report pertained to the year ending January 31, 1995. New Brittany Terrace receives subsidies from the United States Department of Housing and Urban Development ("HUD"), and audits of such businesses are subject to HUD regulations and guidelines. Audits of the operation of such entities are relied upon by HUD in connection with its program to provide subsidized housing.

10. Respondent's conduct of the NBT audit, his preparation and documentation of the audit report, and his publication of the actual written report, exhibited professional deficiencies, as follows:

(A) The work papers generated by Respondent in connection with the NBT audit did not document any audit planning. Those papers failed to demonstrate an understanding of the entities' internal control structure, any assessment of the risk level, judgment of materiality levels, or written audit programs;

(B) In his work papers Respondent failed to demonstrate that he had evaluated or made any conclusions about the three elements of internal control, namely, the control environment, the auditing system, and control procedures;

(C) There was insufficient evidence that Respondent had performed tests of the accounting records, and that he had obtained corroborating evidentiary material such as checks, invoices, contracts, and confirmations;

(D) There was insufficient evidence in the NBT audit workpapers that Respondent had followed audit programs or that he had followed audit steps while conducting the audit;

(D) Respondent failed to obtain written representation from management;

(E) Respondent failed to obtain written representation from the client's attorney concerning litigation, claims, and assessments;

(F) Respondent's audit report failed to state that it was an "independent" audit;

(G) Respondent's audit report failed to state that he had audited the financial statements;

(H) Respondent's audit report failed to identify the Statement of Cash Flows as one of the audited statements, and failed to identify that document as one of the basic financial documents;

(I) Contrary to the applicable HUD Audit Guide, Respondent failed to issue reports covering major and non-major programs;

(J) Respondent failed to set forth in footnotes the five-year summary of maturities required for long-term debt.

(K) Contrary to the applicable HUD Audit Guide, Respondent's audit report failed to either provide a schedule of officer's salaries or a statement that there were no officer salaries;

(L) Respondent performed the audit on a cash basis rather than on an accrual basis, which is the accepted auditing practice; further, Respondent failed to state in his audit report that he had done so.

11. (A) Collectively, the failings and deficiencies set forth in Findings 10(A) through (L) establish that Respondent acted contrary to generally accepted auditing practice in conducting the NBT audit.

(B) Collectively, the failings and deficiencies set forth in Findings 10(A) through (L) establish that Respondent was grossly negligent in performing the NBT audit.

12. In the course of his audit of New Brittany Terrace, Respondent violated Title 16, California Code of Regulations ("CCR"), section 58, by departing from professional standards, based on Findings 10(A) through (L), and 11(A).

13. In the course of his audit of New Brittany Terrace, Respondent violated Business and Professions Code¹, section 5062, by departing from professional standards in his performance of the that audit, based on Findings 10(A) through (L), and 11(A).

14. Respondent's gross negligence committed in the course of his audit of New Brittany Terrace constituted unprofessional conduct in violation of Code section 5100(C), based on Findings 10(A) through (L), and 11(B).

¹ Hereafter all statutory references shall be to the Business and Professions Code, referenced as "Code", unless otherwise noted.

15. Respondent is guilty of unprofessional conduct in violation of Code section 5100(f) by his violations of Code sections 5100(c) and 5062, and CCR section 58, based on Findings 12 through 14.

16. Respondent's conduct in connection with his audit of New Brittany Terrace constituted a violation of those stipulated probation terms which required him to comply with all rules relating to the practice of public accountancy in this state, based on Findings 3(A), 12 through 15.

17. In mitigation, Respondent's failings in connection with his audit of New Brittany Terrace did not harm his client or any other person. Likewise, there is no evidence his failure to timely secure a tax preparer's registration caused any harm to any person. Respondent had made some efforts to secure a tax preparer's certificate, which was issued to him in April 1995. Further, no one of the deficiencies found in connection with his audit of New Brittany Terrace constituted gross negligence, though their cumulative effect did. Finally, Respondent was cooperative in the investigation into these matters.

18. In aggravation, Respondent's conviction occurred during the first six months of his probation. Further, his failings in the New Brittany Terrace Audit were similar in nature to the acts he committed prior to the first proceeding taken against him by the Board. That is, he was previously disciplined, in part, for failing to comply with professional standards in connection with another audit he conducted.

19. In the course of investigating and prosecuting this proceeding, the Board incurred reasonable costs in the sum of \$14,666.69.

DETERMINATION OF ISSUES

1. Cause exists to suspend or revoke Respondent's Certified Public Account Certificate pursuant to Business and Professions Code section 5100(c) for acts of gross negligence, based on Findings 10(A) through 10(L), 11(B), and 14.

2. Cause exists to suspend or revoke Respondent's Certified Public Account Certificate pursuant to Business and Professions Code section 5100(f) for unprofessional conduct, based on Findings 10 through 15, in their entirety.

3. Cause exists to revoke the Respondent's probation, and to vacate the order staying the prior revocation of his license based on his violations of the terms and conditions of probation, based on Findings 2 through 8 and 12 through 16.

4. There are mitigating and aggravating facts which should be considered in imposing any discipline in this case, based on Findings 17 and 18.

5. Cause exists to direct Respondent to pay the Board its reasonable costs of investigation and prosecution, pursuant to Code section 5107(a), based on Finding 11(B) and 14.

6. Respondent's Certificate should be revoked, based on Determinations of Issues 1 through 4, and Finding 18.

Discussion:

When Respondent entered into the stipulation he admitted that he had committed two serious acts of misconduct. One was the preparation of false tax returns to assist his client in obtaining a loan. The other was unprofessional conduct in the performance of an audit of the California Paramedical and Technical College (hereafter "the prior audit"). That second matter established numerous technical shortcomings on his part.

Despite that serious misconduct, the Board demonstrated leniency by staying the revocation of his license and by placing him on probation. In return, Respondent agreed to comply with his professional responsibilities, to complete some professional education, and to file some simple quarterly reports.

Within approximately one year of the stipulation's effective date Respondent had been convicted of operating a business without a license, and had conducted an audit in the same slipshod and unprofessional manner that he had demonstrated in connection with the prior audit. Further, two of his first five quarterly reports were filed weeks or even months after they were due.

It must be noted that in the course of the prior audit Respondent failed to prepare adequate working papers and failed to assess the College's internal controls. He failed to properly plan and document that audit. He failed to perform adequate testing, and Respondent failed to obtain legal and management representation letters. (See the Accusation in case no. AC-94-14, Exhibit "A" to the Stipulation.)

The aforementioned professional failings also occurred in the New Brittany Terrace audit. (Findings 10(A), (C), (D), and (E).) To be sure, Respondent had rational explanations for some of his audit mistakes. For example, he has worked for New Brittany Terrace for years, and is familiar with the operation of that business, a simply-run, small apartment building. That he would not intensively document every aspect of his audit is perhaps understandable. And, the Board's expert witness acknowledged that

no one of the audit errors established in this case proved gross negligence. However, it is plain that taken together they do.

This ALJ does not believe that Respondent deliberately set out to violate the law when he began preparing tax returns without a registration. He took steps to obtain a registration, which were frustrated in some instances by his inability to locate an office where he could obtain an application. He apparently had some idea that if he eventually obtained a registration, it would somehow validate those business activities undertaken prior to the issuance of the registration. But, in the end, it must be concluded that Respondent approached his application for a tax preparer's registration in the same negligent manner that he approached the audits, and his obligation to file quarterly reports.

The primary purpose of this proceeding is to protect the public, and not to punish the Respondent. (Camocho v. Youde (1979) 95 Cal. App. 3d 161, 164.) However, Respondent learned nothing from his prior discipline, and there is no reason to believe that he will learn anything from further leniency. The public must rely on the integrity of financial audits as well as on the integrity and competence of those Certified Public Accountants who perform them. There is substantial evidence that the public can only be protected by revocation of Respondent's certificate, and despite some mitigating facts, there is no evidence that the public can be protected by anything less than that ultimate sanction.

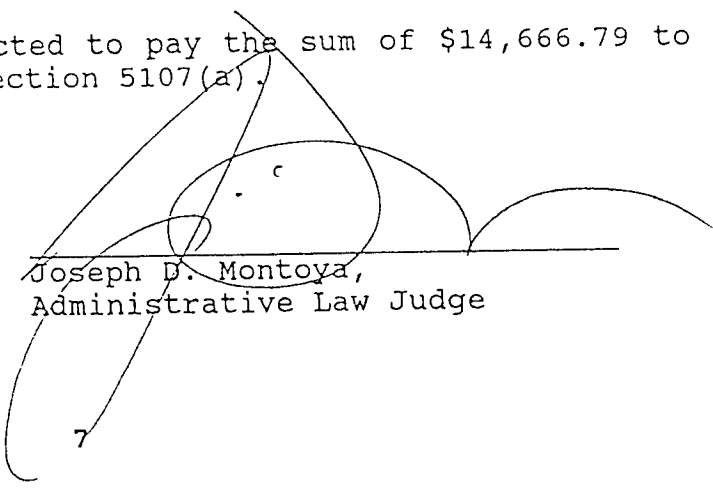
Under all of the facts and circumstances Respondent's Certificate must be revoked.

ORDER

The Order staying the revocation of Respondent's Certified Public Accountant Certificate, number 23757, made effective January 7, 1995, in the Board's case number AC-94-14, is hereby vacated. Certified Public Accountant Certificate number 23757, issued to Benigno Bercasio Alas, Jr., is hereby revoked.

Respondent is directed to pay the sum of \$14,666.79 to the Board pursuant to Code section 5107(a).

September 9, 1997


Joseph D. Montoya,
Administrative Law Judge

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of the State of California
2 MICHAEL A. SHEKEY, State Bar No. 143436
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Telephone: (213) 897-2520
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10
11 In the Matter of the Petition to) NO. D1-94-14
Revoke Probation and Accusation)
12 Against:) OAH No. L-9703009
13 BENIGNO BERCASIO ALAS, JR.) FIRST SUPPLEMENTAL
P.O. Box 250097) PETITION TO REVOKE
14 Glendale, California 91225) PROBATION AND
15 Certificate Number 23757,) ACCUSATION
Respondent.)
16)
17)

18
19 Petitioner and Complainant, Carol B. Sigmann, as
20 further causes for discipline, alleges:

21 1. Petitioner and Complainant, Carol B. Sigmann,
22 makes and files this First Supplemental Petition to Revoke
23 Probation and Accusation in her official capacity as Executive
24 Officer of the Board of Accountancy, Department of Consumer
25 Affairs, State of California.

26 2. The allegations of Paragraphs 2, 3, 3a, 3b, 3c, 3d,
27 4, 5, 9, 9a, 9b, 9c, 9c [sic], 9d, 9e, and 9f of the Petition to

1 Revoke Probation and Accusation heretofore filed are realleged
2 and incorporated herein by reference as if fully set forth.

3 3. On or about May 16, 1997, Benigno Bercasio Alas,
4 Jr. (hereinafter referred to as the "Respondent") provided his
5 work papers that supported his audit of New Brittany Terrace for
6 the year ended December 31, 1995.

7 STATUTES

8 4. California Business and Professions Code, section
9 5100(c) provide the following:

10 After notice and hearing the board may revoke, suspend
11 or refuse to renew any permit or certificate granted under
12 Article 4 (commencing with Section 5070) and Article 5
13 (commencing with Section 5080), or may censure the holder of
14 that permit or certificate for unprofessional conduct which
15 includes, but is not limited to, one or any combination of
16 the following causes:

17 (c) Dishonesty, fraud, or gross negligence in the
18 practice of public accountancy or in the performance of
19 bookkeeping operations described in Section 5052.

20 5. California Business and Professions Code, section
21 5107(a) provides the following:

22 The executive officer of the board may request the
23 administrative law judge, as part of the proposed decision
24 in a disciplinary proceeding, to direct any holder of a
25 permit or certificate found guilty of unprofessional conduct
26 in violation of subdivisions (b), (c), (i), and (j) of
27 Section 5100, or involving a felony conviction in violation

1 of subdivision (a) of Section 5100, or involving fiscal
2 dishonesty in violation of subdivision (h) of Section 5100,
3 to pay to the board all reasonable costs of investigation
4 and prosecution of the case, including but not limited to
5 attorneys' fees. The board shall not recover costs incurred
6 at the administrative hearing.

7 ACCUSATION

8 6. As indicated above, Respondent provided the
9 Board of Accountancy (hereinafter referred to as the "Board")
10 with what purported to be his work papers which supported his
11 audit of New Brittany Terrace for the year ended December 31,
12 1995. Said work papers consisted of: a trial balance; a bank
13 reconciliation of account #07300-30358; an account status summary
14 for mortgage loan and reserves for the period January 1, 1995 to
15 January 1, 1996; a bank reconciliation of account #07307-50257; a
16 one-page evaluation of internal control; journal entries (3
17 pages); a cash disbursements register for January 3, 1995 -
18 December 28, 1995; a one-page schedule of income and expenses;
19 and an updated financial statement, page 9 - Schedule of Changes
20 of Fixed Asset Accounts for the year ended December 31, 1995.

21 7. As a result of the conduct described in paragraph
22 6, Respondent is subject to discipline under California Business
23 and Professions Code, section 5100 (c), Gross Negligence, in that
24 his audit of New Brittany Terrace contained extreme departures
25 from general accepted auditing standards (GAAS). The departures
26 from GAAS include, but are not limited to, the following:

27 a. The work papers did not document any planning of

1 the audit. There was no evidence of an understanding of the
2 entity's business and the industry in which it operates;
3 analytical review procedures; understanding of the entity's
4 internal control structure; assessing the level of control
5 risk, preliminary judgement about materiality levels, and
6 written audit programs.

7 b. Respondent did not document his understanding and
8 consideration of the elements of internal control. There
9 was no evidence relative to the consideration of internal
10 control in the Respondent's work papers. There was no
11 evidence that Respondent made an evaluation or came to any
12 conclusion regarding the three elements of internal control:
13 the control environment, the auditing system, and control
14 procedures. There is no evidence that Respondent assessed
15 the level of control risk.

16 c. There is no evidence Respondent considered errors
17 or irregularities in conducting an Audit.

18 d. There is no evidence Respondent performed tests of
19 the accounting records. In addition, there is no evidence
20 that the Respondent obtained corroborating evidential
21 material such as checks, invoices, contracts, minutes of
22 meetings, and confirmations; or other information which
23 permits the Respondent to reach conclusions.

24 e. The Respondent did not use audit programs. In
25 addition, the supporting schedules did not contain tickmarks
26 or explanations to indicate that audits steps were in fact
27 performed.

1 f. The Respondent failed to obtain written
2 representation from management.

3 g. The Respondent failed to obtain written
4 representation from the client's lawyer concerning
5 litigation, claims, and assessments.

6 WHEREFORE, petitioner and complainant Carol B. Sigmann
7 prays that this First Supplemental Petition to Revoke Probation
8 and Accusation be heard at the same time and place as the
9 Petition to Revoke Probation and Accusation previously filed
10 herein, and that following said hearing a decision be issued:

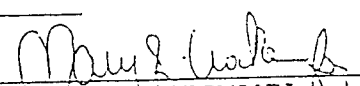
11 1. Revoking or suspending Certificate Number 23757
12 heretofore issued to Respondent Benigno Bercasio Alas, Jr.;

13 2. Revoking probation or reimposing the order
14 revoking Certified Public Accountant Certificate Number 23757
15 heretofore issued to Benigno Bercasio Alas, Jr.;

16 3. Ordering Respondent Benigno Bercasio Alas, Jr. to
17 reimburse the Board for its costs of investigation and
18 prosecution of this matter pursuant to California Business and
19 Professions Code, section 5107; and

20 4. Taking such other and further action as may be
21 deemed proper and appropriate.

22 DATED: 6-9-97

23 
24 CAROL B. SIGMANN
25 Executive Officer
26 Board of Accountancy
27 Department of Consumer Affairs
State of California

Petitioner/Complainant

1 DANIEL E. LUNGREN, Attorney General
 of the State of California
 2 MICHAEL A. SHEKEY, State Bar No. 143436
 Deputy Attorney General
 3 Department of Justice
 300 South Spring Street, Suite 500
 4 Los Angeles, California 90013
 Telephone: (213) 897-2520
 5 Attorneys for Complainant

8 BEFORE THE
 BOARD OF ACCOUNTANCY
 9 DEPARTMENT OF CONSUMER AFFAIRS
 STATE OF CALIFORNIA

10
 11 In the Matter of the Petition to) No. D1-94-14
 Revoke Probation and Accusation)
 12 Against:)
)
 13 BENIGNO BERCASIO ALAS, JR.) PETITION TO REVOKE
 P.O. Box 250097) PROBATION AND ACCUSATION
 14 Glendale, California 91225)
)
 15 Certificate Number 23757,)
)
 16 Respondent.)

17
 18 Petitioner and Complainant, Carol B. Sigmann, alleges:

19 PETITION TO REVOKE PROBATION

20 1. Petitioner, Carol B. Sigmann, makes and files this
 21 Petition to Revoke Probation in her official capacity as
 22 Executive Officer of the Board of Accountancy, Department of
 23 Consumer Affairs, State of California.

24 2. On December 10, 1976, the State Board of
 25 Accountancy (hereinafter referred to as "the Board") issued a
 26 Certified Public Accountant Certificate (Number 23757) to Benigno
 27 Bercasio Alas, Jr. (hereinafter referred to as "the Respondent").

1 On or about October 8, 1994, the Respondent entered into a
2 Stipulation, wherein he agreed to comply with the related
3 settlement terms and conditions. (Exhibit "A") Said Stipulation
4 became effective on January 7, 1995.

5 3. Among the terms and conditions agreed to by the
6 Respondent were the following:

7 a. Respondent's Certified Public Accountant
8 Certificate Number 23757 was therein revoked, with
9 revocation stayed for a probationary period of three (3)
10 years, with an actual suspension of 180 days [See page three
11 of Exhibit "A", lines 2-7];

12 b. Respondent's suspension period commenced from the
13 effective date of the Board's decision (January 7, 1995),
14 and respondent understood and agreed that he would be
15 prohibited from engaging in any activity for which
16 certification as a CPA or PA would be required [See page
17 three of Exhibit "A", lines 8-12];

18 c. Respondent obligated himself pursuant to the
19 subject Stipulation to obey all federal, state and local
20 laws, and all rules relating to the practice of public
21 accountancy in the State of California [See page three of
22 Exhibit "A", lines 13-15];

23 d. Respondent obligated himself pursuant to the
24 subject Stipulation to file written quarterly reports on
25 forms provided by the Board no later than ten (10) days
26 following the close of each quarter [See page three of
27 Exhibit "A", lines 16-18].

1 4. Grounds exist to revoke probation in that
2 Respondent did not comply with Condition (2) of the Disciplinary
3 Order (See Exhibit "A"), in that Respondent failed to obey state
4 and local laws regarding tax preparation registration, and was
5 convicted in Glendale Municipal Court for preparing tax returns
6 without a valid license in violation of California Business and
7 Professions Code, section 9891.20 (a).

8 5. Grounds exist to revoke probation in that
9 Respondent did not comply with Condition (3) of the Disciplinary
10 Order (See Exhibit "A"), in that Respondent failed to submit
11 timely quarterly reports; specifically, for the quarter ended
12 December 31, 1995 and the quarter ended March 31, 1996,
13 Respondent did not submit quarterly reports until May 24, 1996.

14 ACCUSATION

15
16 STATUTES

17 6. The Board may suspend or revoke the certificate to
18 practice public accountancy of any certificate holder who has
19 been guilty of unprofessional conduct. Unprofessional conduct
20 includes, but is not limited to, the violation of any provision
21 of the Accountancy Act and regulations implementing the Act.
22 (California Business and Professions Code, sections 5000 et
23 seq.), pursuant to California Business and Professions Code,
24 section 5100 (f).

25 7. California Business and Professions Code, section
26 5062 provides that a licensee shall issue a report which conforms

27 / / /

1 to professional standards upon completion of a compilation,
2 review or audit of financial statements.

3 REGULATION

4 8. California Code of Regulations, Title 16, section
5 58, a regulation of the Board, provides that licensees engaged in
6 the practice of public accountancy shall comply with all
7 applicable professional standards, including but not limited to
8 generally accepted accounting principles and generally accepted
9 auditing standards.

10 AUDIT OF NEW BRITTANY TERRACE

11 9. Respondent issued an audit report in the audit of
12 New Brittany Terrace for the year ended December 31, 1995, which
13 included the following deficiencies, and therefore did not
14 conform to the requisite professional standards:

15 a. Respondent (Auditor) failed to title the audit
16 report, dated February 26, 1996, and to use the word
17 "independent."

18 b. Respondent (Auditor) failed to state in his report
19 that the financial statements were audited.

20 c. Respondent (Auditor) referred to the Statement of
21 Changes in Financial Position as one of the basic financial
22 statements; however, this statement was replaced by the
23 Statement of Cash Flows, which was also included, but not
24 identified as one of the basic financial statements. SAS §
25 AU 508.06 states that the auditor's report is customarily
26 issued in connection with an entity's basic financial
27 statements - Balance Sheets, Statement of Income, Statement

1 of Retained Earnings and Statement of Cash Flows. Each
2 financial statement audited should be specifically
3 identified in the introductory paragraph of the auditor's
4 report. Moreover, page 5-3 of the HUD Audit Guide states
5 that Statement of Cash Flows is one of the basic financial
6 statements to be reported by the auditor.

7 c. Respondent (Auditor) failed to issue reports
8 covering major and non-major programs. Page 3-3 of the HUD
9 Audit Guide states that the following reports are required:
10 Report on Audited Financial Statements and Supplemental
11 Information; Report on Internal Control Structural; Opinion
12 on Compliance with Specific Requirements Applicable to Major
13 HUD Program; Report on Compliance with Requirements
14 Applicable to Non-major HUD Program Transactions; Schedule
15 of Findings and Questioned Costs; Auditor's Comments on
16 Audit Resolution Matters Relating to HUD Programs; and
17 Corrective Action Plan.

18 d. Respondent (Auditor) did not present in the
19 footnotes the 5-year summary of maturities required for
20 long-term debt. FASB statement number 47, paragraph 10,
21 requires that the combined aggregate amount of maturities
22 and sinking fund requirements for all long-term borrowings
23 be disclosed for each of the 5 years following the date of
24 the latest balance sheet being presented.

25 e. Respondent (Auditor) did not include a schedule of
26 officers salaries or a statement that there were no officer
27 salaries which is required by the HUD Audit Guide. Page 5-3

1 of the HUD Audit Guide states that a schedule of
2 compensation of partners or officers is required.

3 f. Respondent (Auditor) indicated in his audit report
4 that compliance and internal controls were reviewed in
5 accordance with the HUD Audit Guide IG 4372; however, HUD
6 Audit Guide IG 2000.4, dated October 1991, is currently in
7 effect for mortgagors having HUD insured or secretary-held
8 multifamily mortgages. HUD Audit Guide IG 2000.4 prescribes
9 HUD requirements for independent public accountants who
10 conducts audits of HUD-assisted programs for auditees other
11 than those covered by OMB Circulars A-128 and A-133.

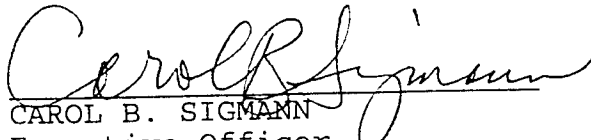
12 WHEREFORE, petitioner and complainant Carol B. Sigmann
13 prays that a hearing be held and that the following said hearing
14 a decision be issued:

15 1. Revoking or suspending Certificate Number 23757
16 heretofore issued to Respondent Benigno Bercasio Alas, Jr.;

17 2. Revoking probation or reimposing the order
18 revoking Certified Public Accountant Certificate Number 23757
19 heretofore issued to Benigno Bercasio Alas, Jr.; and

20 3. Taking such other and further action as may be
21 deemed proper and appropriate.

22 DATED: January 22, 1997

23 
24 CAROL B. SIGMANN
25 Executive Officer
26 Board of Accountancy
Department of Consumer Affairs
State of California

27 C:\WP\Shekey\Alas.Pet
03541110-LA96AD2181

Petitioner/Complainant

EXHIBIT A

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 HOOMAN ROWSHAN,
Deputy Attorney General
3 300 South Spring Street
Los Angeles, CA 90013
4 Telephone: (213) 897-2580

5 Attorneys for Petitioner

6 BEFORE THE
BOARD OF ACCOUNTANCY
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA
9

10 In the Matter of the Accusation)
Against:)

NO. AC-94-14

11)
12 BENIGNO BERCASIO J. ALAS)
2480 Aaron Street)
13 Los Angeles, CA 90057)
Certified Public Accountant)
14 Certificate No. CPA 23757)

STIPULATION, DECISION,
AND ORDER

15 Respondent.)
16

17 IT IS HEREBY STIPULATED AND AGREED by and between the
18 parties to the above entitle matter as follows:

19 1. At the time of executing and filing the accusation
20 in the above matter, complainant, Carol Sigmann, was the Executive
21 Officer for the Board of Accountancy, Department of Consumer
22 Affairs (hereinafter "Board") and filed the said accusation in the
23 above matter solely in her official capacity and not otherwise.

24 2. Respondent has received and read the accusation
25 heretofore filed in case number AC-94-14 currently pending before
26 the Board. A copy of said accusation is attached, marked Annex A,
27 and is incorporated herein by this reference.

1 3. Respondent has been informed of his right to have
2 an attorney represent him with respect to the content and effect
3 of this stipulation.

4 4. Respondent is aware of his right to a full and
5 complete hearing on the charge(s) and allegation(s) contained in
6 the accusation, his right to reconsideration, appeal, and all other
7 rights which may be afforded him by the California Administrative
8 Procedures Act in connection with this accusation. Respondent
9 acknowledges receipt of his rights under the California
10 Administrative Procedures Act. For purposes of this stipulation,
11 respondent freely and voluntarily waives his right to a hearing,
12 his right to reconsideration, to appeal, and to any and all rights
13 afforded to him by the California Administrative Procedures Act or
14 any other law governing accusation No. AC-94-14.

15 5. The characterization of law and fact, as set forth
16 herein, are made solely for purposes of settlement between the
17 board and the respondent, and are null and void for any proceeding
18 except as between the Board and the respondent. Respondent admits
19 the truth of the allegations contained in the Accusation pending
20 against him. Respondent further admits that he is subject to
21 discipline under Business and Professions Code sections 5100 (c),
22 5100(h), (i) and 5100(f).

23 6. Based on the foregoing admissions, stipulations, and
24 recitals, it is agreed that the Board may issue the following
25 decision and order:

26 / / /

DISCIPLINARY ORDER

Certified Public Accountant Certificate No. 23757, issued December 10, 1976, to BENIGNO BERCASIO J. ALAS, JR., is hereby revoked. However, said revocation is stayed, respondent's certificate is suspended for 180 days, and respondent is placed on probation for a period of three (3) years on the following terms and conditions:

(1) The suspension period shall commence from the effective date of the Board's decision. It is further understood that the respondent shall be prohibited from engaging in any activity for which certification as a CPA or PA is required.

(2) Respondent shall obey all federal, state and local laws, and all rules relating to the practice of public accountancy in the State of California.

(3) Respondent shall file written quarterly reports on form(s) provided by the Board no later than 10 days following the close of each quarter.

(4) For purposes of paragraph "3", the word "file" shall mean actual receipt by or delivery to the Board at its regular place of business or other location(s) as may be designated by the Board.

(5) Respondent shall comply with all citations.

(6) The respondent shall make personal appearances before the Administrative Review Committee of the Board. Respondent shall receive reasonable notification of the time and the location of Committee's meeting(s). The

respondent shall not be excused from attendance at the designated meeting(s) of the Committee unless excused in writing by the Board or its authorized employee or agent.

(7) The respondent shall cooperate fully with the Board and any of its agents or employees in their supervision and investigation of his compliance with the terms and conditions of his probation, including the Board's Probation Surveillance Compliance Program.

(8) In the event respondent should leave California to reside or practice outside the State, the respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the State shall not apply to the reduction of the probationary period.

(9) If the respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation, and carry out the disciplinary order which has been stayed. If an accusation or petition to revoke probation is filed against the respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation is extended until the matter is final.

(10) The respondent shall be subject to, and shall permit, a general review of the respondents' professional practice. Such review shall be conducted by the Board whenever designated by the Administrative Committee, provided notification of review is accomplished in a timely manner.

/ / /

1 (11) The respondent shall reimburse the Board \$5,345.63
2 for the reasonable cost of its investigation and prosecution of
3 this matter, including legal fees incurred for the out of court
4 settlement of this matter.

5 (12) For purposes of paragraph "11", respondent shall be
6 permitted to reimburse the Board for its cost with one
7 lump sum payment on or before May 30, 1995.

8 (13) Until accepted by the Board of Accountancy, this
9 stipulation shall be of no force and effect on the parties.

10 (14) Respondent shall be required to complete 40 hours
11 of CPE Courses as directed by the Administrative Committee,
12 and it is understood between and by the parties that these
13 courses shall be in addition to those continuing education
14 hours needed for relicensing.

15 (15) Respondent shall be required to complete a Board-
16 approved course in ethic with one year following the
17 resumption of practice as a certified public accountant.

18 (16) Respondent shall submit his working papers and draft
19 reports relative to new audit engagements to an outside CPA
20 for review prior to issuance of audit reports.

21 (19) For purpose of paragraph "11," and "12" it is
22 further understood by the parties that failure to comply with the
23 requirements of paragraph "11" and "12" shall be grounds for

24 / / /

1 revocation of respondent's probation and the reinstatement of the
2 Board's order revoking CPA Certificate Number 23757.

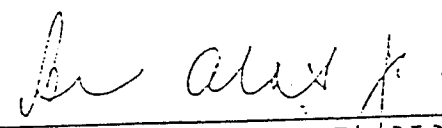
3 DATED: 10/8/94

4 DANIEL E. LUNGREN
5 Attorney General

6 By 

7 HOOMAN ROWSFAN
8 Deputy Attorney General

9 Attorneys for the Complainant

10 
11 BENIGNO BERCASIO J. ALAS
12 Respondent
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